**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1846 of 1984**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**GUJARAT STATE RAOD TRANSPORT CORPORATION - Appellant(s)**
**Versus**
**TAKHATSING KASHIYAJI VAGHELA & 5 - Defendant(s)**

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**Appearance :**
MS MAYA DESAI for Appellant,
NOTICE SERVED for Respondent Nos.1 to 5.
Respondent No.6 is deleted.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 17/08/2007**

**ORAL JUDGMENT**

1. Ms.Maya Desai, learned counsel for the appellant. None for the respondent Nos.1 to 5 though served. The name of respondent No.6 is deleted.

2. The appellant - Gujarat State Road Transport Corporation

being aggrieved by the award dtd.21/4/1984 passed by the Motor Accident Claim Tribunal (Main), Rajkot in Motor Accident Claim Petition No.304 of 1982, has filed this appeal.

3. Short facts necessary for disposal of the first appeal are that a First Information Report came to be lodged by one of the injured cyclist that the driver of the offending bus was driving the vehicle rashly and negligently and when he tried to overtake the cyclist, he dashed against the cycle, which led to the death of the pillion rider. Thereafter, panchnama of the spot was prepared. The claimants filed the claim petition submitting inter-alia that the deceased was a young boy of 18 years, he was earning well and the family was dependent upon him, they, therefore, claimed a sum of Rs.1,00,000=00 (Rupees One Lac only). The driver (respondent No.6 – now deleted) and the appellant – Gujarat State Road Transport Corporation, filed their written statement submitting inter-alia that the bus was being driven at moderate speed, the driver was neither rash nor negligent and the accident was the result of rash and negligent cycling of the cyclist. After recording the evidence of the parties, the learned tribunal held that the

claimants would be entitled to a sum of Rs.65,700=00. Gujarat State Road Transport Corporation, being aggrieved by the said award, is before this Court with a submission that the tribunal was unjustified in holding the driver guilty of the laches and also erred in awarding such compensation in favour of the claimants.

4. The learned tribunal has given its due consideration not only to the oral evidence but even to the exhibits and other minute details which are available on the records. From panchnama Exh.15, it would clearly appear that the bus had scratch marks from the front left side running upto rear left side. The panchnama also showed that on front left side bloodstains were found and some bloodstains were also found on the left rear wheel. These two statements in the panchnama, would clearly show that the cyclist did not dash against the rear side of the bus, but, in fact, the bus had dashed against the cyclist which was going ahead of the bus. The scratch marks on the left side of the vehicle running from front to rear and the bloodstains found on the front left and rear left wheels of the bus would clearly show that the driver of the bus, in fact, was rash and negligent. It was contended that the person who was cycling had made certain

statements in the First Information Report, but later on changed his version. The only contradiction which could be brought on the records was that when the cyclist was cycling, there was some motorcycle on left of the cyclist. Assuming this fact, as stated in the First Information Report, is correct, then too, the evidence relating to rashness and negligence on the part of the driver of the bus would not be adversely affected. It was then contended that the tribunal could not award a sum of Rs.65,700=00 in favour of the claimants. The tribunal has found that the average income including the future prospects of the deceased could be assessed at Rs.600=00. In the year 1982 a person could easily earn a sum of Rs.20=00 per day. If the tribunal held that the future income or the average income could be Rs.600=00, then, it was not wrong in holding so. The tribunal was also not unjustified in holding the dependency to be Rs.400=00 per month or Rs.4800=00 per year. Looking to the age of the deceased, multiplier of 15 cannot be said to be on the excessive side. It is to be noted that on one side, the tribunal was holding the dependency to be Rs.4800=00 per year, but for no good reason, it held that the dependency would be

Rs.4000=00 per year. If the dependency could be Rs.4800=00 per year, then, there was no good reason for the tribunal to reduce it to Rs.4000=00 per year and award Rs.60,000=00 only. In fact, the tribunal had awarded less amount under the head of loss of income.

5. So far as the other awards are concerned, this Court is unable to hold that the tribunal was unjustified in making the award under the head of loss of the company etc.

6. I find no reason to interfere. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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